

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No. 07-cr-80- 01-SM

Michael Monahan

ORDER

Re: Document No. 72, Assented to MOTION to Withdraw Plea of Guilty to Count One of the Information, and to Dismiss the Charge with Prejudice

Ruling: Granted. The motion to permit the defendant to withdraw his guilty plea, and to dismiss Count One of the Information, is filed by the government, not the defendant. But, because it is said to be filed with the assent of the defendant, I will accept it as the defendant's choice - i.e., that the defendant moves to withdraw his plea to Count One of the Information. The best that can be said about the motion to withdraw guilty plea is that it presents a close question. The "fair and just reason" test for withdrawing a plea before sentencing is probably not ordinarily met when the reason given is, as it seems to be here, an alleged mistake as to the ability of the government to marshal sufficient "admissible" evidence to obtain a conviction at trial. The defendant, after all, admitted each and every essential element, based upon the government's factual proffer - so there was no need for "admissible" evidence. That the defendant thought he would be convicted anyway when he pled guilty, and now isn't so sure, is a fairly weak basis upon which to allow a plea withdrawal. It is hardly unusual for a defendant's admissions to eliminate what might otherwise be testy issues of proof for the government at trial, and, ordinarily, a different assessment of the strength of the government's evidence, after factual admissions have been made in court and under oath, will not suffice to undo a guilty plea. Nevertheless, as the government has filed the motion, and, importantly, also seeks to dismiss that count as well, I will defer to the prosecutor's judgment and, in the interests of justice, grant the motion to withdraw defendant's guilty plea to Count One, and dismiss Count One of the Information, primarily because, absent unusual circumstances, I would normally grant a government motion to dismiss a count prior to sentencing. So ordered.



Steven J. McAuliffe
Chief Judge

Date: February 5, 2009

cc: Counsel of Record